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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of Section 3(n) and 332 of the Communications Act Competitive Bidding	)	GN Docket No. 93-252
	)	
Regulatory Treatment of Mobile Services	)	

To: The Commission

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REPLY COMMENTS

THE NATIONAL ASSOCIATION OF BLACK OWNED BROADCASTERS, INC.

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REPLY COMMENTS

The National Association of Black Owned Broadcasters, Inc., ("NABOB"), by its attorneys, hereby submits its Reply Comments in the above-captioned proceeding, in response to the Second Further Notice of Proposed Rule Making, FCC 94-191, released July 20, 1994 ("SFNPRM"). NABOB submits these Reply Comments to add its support to the many commenters who stated that the Commission should not treat management agreements as attributable interests with respect to the construction and operation of PCS systems by minority owned companies.

THE COMMISSION SHOULD PROVIDE "SAFE HARBOR" GUIDELINES FOR MANAGEMENT AGREEMENTS TO BE ENTERED INTO BY MINORITY OWNED SMALL BUSINESSES

In the SFNPRM, the Commission expressed concern about the possible use of management agreements by front and sham companies attempting to qualify as designated entities. NABOB is mindful of the concerns which prompted the Commission to issue the SFNPRM. The Commission quite correctly should not allow its policies designed to foster ownership of PCS systems by designated entities to be used by fronts and shams. NABOB fully supports this objective. Such front and sham arrangements often receive great media attention and undermine support for policies which could be used to benefit many committed, hardworking, entrepreneurs who are ready, willing and able to fully comply with the letter and spirit of the Commission's policies.

NABOB submits, however, that the Commission's ownership eligibility rules and definitions are quite adequate to assure that minority owned small businesses will be in *de facto* and *de jure* control of the licensee PCS companies. The Commission's policies ensure that minority owned small businesses will be the long term owners of their PCS systems and that entities not qualified to bid in the entrepreneur blocks will be unable to obtain enough equity ownership to assume *de jure* or *de facto* control of the licensee.

The Commission should not restrict the use of management agreements by minority owned small businesses to ensure that those businesses will retain control of their licenses. The reality of the market place is that most minority owned small businesses have little or no experience constructing and operating wireless telecommunications systems. Many minority owned small businesses have a great deal of business ownership and operation experience (many, such as NABOB's members, are successful radio and television station owners). However, the business of wireless telecommunications is a very different business dominated by major corporations. Those major corporations are expected to attempt to dominate broadband PCS by acquiring large groups of MTA licenses.

(Many such companies have already achieved that goal in the auction for national narrowband PCS licenses.)

In order to compete in the broadband PCS business, minority owned small business will need access to some of the expertise, experience, and resources of the existing giants of the wireless telecommunications business. In many cases this will require minority owned small businesses to enter into management agreements with such companies. NABOB recognizes that such arrangements carry the risk of being used to create front and sham arrangements. However, NABOB submits that the solution is not to preclude the use of such arrangements by all minority owned small businesses merely because of the potential for abuse by a few. Rather, the solution is to give clear guidance to all parties in advance of the creation of such management agreements as to the specific terms which must be included in such agreements.

In this regard, NABOB supports the comments filed in this proceeding by PCC Management Corp. ("PCC"). Comments, of PCC Management Corp., filed August 9, 1994. In its Comments PCC discussed the Commission's policies with respect to management agreements set forth in Intermountain Microwave, 24 RR 983 (1063). PCC proposed that the Commission provide applicants with guidance by specifying a set of "safe harbor" provisions which would have to be included in a management agreement to allow it to pass Commission review as not constituting a *de facto* transfer of control. The proposed provisions were the following:

1. The licensee may remove the management company upon substantial misconduct or uncorrected violation of Commission rules, without penalty.

2. The licensee must review and sign all applications, amendments, and similar filings with the Commission, and may obtain whatever changes it deems desirable in such documents.

3. The licensee may inspect all physical facilities, books and records, and other assets used in connection with its licensed system at any time, without prior notice.

4. The licensee must retain control of all major policy decisions, including the sale of the licensee or the system, mergers and joint ventures with others, and the annual construction and operating budget. Conversely, the management company would not violate Commission rules by making operational decisions consistent with the budget and the management agreement.

5. The licensee bears the ultimate risk of loss and the possibility of profit from operations of the system or sale of the system and the license. In this context, bona fide financing arrangements and fixed-fee or percentage of revenue management contracts would not be deemed to remove the licensee's ultimate risk of profit or loss. Nor would the licensee be required to have personal liability for the losses, so long as any contractual liability was commercially reasonable or consistent with industry practice.

6. The licensee must be able to terminate the management contract within ten (10) years of its effective date or last renewal without penalty.

7. The management company cannot hold a veto power over the licensee's powers under the agreement. If the manager holds a bona fide ownership interest in the licensee, it may have whatever power arises from its ownership interest and not from the management agreement.

8. Existing management agreements amended to be in compliance with these requirements within a reasonable period of time from the adoption of the safe-harbor rules (say, six months) would provide a safe harbor for prior conduct in the absence of on-going Commission proceedings or egregious violations of the Commission's rules or policies.

PCC Comments at 7-8.

NABOB submits that application of these or other safe harbor guidelines would allow minority owned small businesses to gain access to the resources of a much needed set of potential management entities and ensure that the agreements between the minority owned small businesses and the management entities would not result in a *de facto* transfer of control. To the extent any of the above proposed guidelines would be deemed inconsistent with the Commission's Intermountain Microwave decision, that decision should not be applied in the context of management agreements for minority owned small businesses in PCS.

Respectfully submitted,

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